

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 6:17-CR-00039-RC-JDL-5
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Tyler, Texas
)	
HUGO PINEDA,)	Wednesday, November 29, 2017
)	
<u>Defendant.</u>)	(2:03 p.m. to 2:33 p.m.)

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE JOHN D. LOVE,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: ALLEN HURST, ESQ.
U.S. Attorney's Office
110 N. College Ave., Suite 700
Tyler, TX 75702

For Defendant: REYNALDO P. MORIN, ESQ.
320 North St., Suite 308
Nacogdoches, TX 75961

Interpreter: Luis Garcia

Deputy Clerk/ECRO: S. Baum

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transcript produced by transcription service.

1 Tyler, Texas; Wednesday, November 29, 2017; 2:03 p.m.

2 (Official Interpreter Utilized For Translation)

3 (Call to order)

4 **THE COURT:** Please be seated. Ms. Baum, call the
5 case.

6 **THE CLERK:** Court calls Case 6:17-cr-39, *United*
7 *States of America versus Hugo Pineda.*

8 **THE COURT:** Announcements.

9 **MR. HURST:** Good afternoon, your Honor. On behalf of
10 the Government, Allen Hurst, Assistant United States Attorney.
11 We're ready to proceed on what we believe will be a change of
12 plea to Count Eleven of the indictment. And we filed the
13 paperwork with the Court.

14 **THE COURT:** All right, thank you.

15 **MR. MORIN:** Good afternoon, your Honor, Reynaldo
16 Morin for (indisc.)

17 **THE COURT:** All right, thank you. Mr. Morin, I
18 believe this -- we do have a written plea agreement here.

19 **MR. MORIN:** We do, your Honor.

20 **THE COURT:** All right. Well, Mr. Pineda, I'm going
21 to first place you under oath so I can ask you some questions
22 about your intention to plead guilty. So I know you're
23 listening in by phone through the interpreter, but if you
24 would, raise your hand? You can raise your left hand or
25 switch, it doesn't matter, raise either hand if you would, and

1 Ms. Baum will swear you in.

2 (Defendant sworn)

3 THE COURT: All right. And as I mentioned, we have
4 Mr. Luis Garcia, who is the Eastern District staff interpreter,
5 interpreting for us today on the phone. Mr. Pineda, let me
6 tell you as we proceed here today, that you're listening to the
7 translation of what's going on here by phone. And if you need
8 to speak to me, in other words you need me to stop asking you
9 questions and you want to ask me a question, you can tell
10 Mr. Garcia on the phone that you'd like to do that. Or you can
11 tell Mr. Garcia on the phone that you would like to stop and
12 ask Mr. Morin a question, your attorney. So you understand
13 that you do have that ability to do that?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Next, Mr. Pineda, let me ask
16 you, do you understand that you were previously placed under
17 oath, and if you answer any of the questions asked of you today
18 falsely, those answers may later be used against you in a
19 prosecution for perjury or making a false statement?

20 THE DEFENDANT: Yes.

21 THE COURT: Has your attorney explained to you that
22 you have the right to have your plea taken by a United States
23 District Judge?

24 THE DEFENDANT: Yes.

25 THE COURT: Is it your desire to waive your right to

1 proceed before a district judge and have your plea taken by me,
2 a United States Magistrate Judge?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Do you understand that your plea is
5 subject to approval and final acceptance by a U. S. District
6 Judge, and sentencing will be conducted by a U. S. District
7 Judge?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** All right, Mr. Pineda, I want you to look
10 then at a form I have here. I want you to look at this with
11 Mr. Morin. And this can be translated for you. It just tells
12 me in writing what you just indicated to me verbally, that is
13 you're agreeing to have me take your plea. So look that over
14 with your attorney. It can be translated for you by our
15 interpreter. And you can sign that.

16 **THE DEFENDANT:** Okay.

17 **(Pause)**

18 **THE COURT:** All right, thank you. The record reflect
19 that the Defendant and his attorney have signed the consent
20 form that I've just gone over. Mr. Pineda, I'm now going to
21 ask you some questions that illicit a little bit of background
22 information. So if you could first tell me your full name.

23 **THE DEFENDANT:** Hugo Ramirez Pineda.

24 **THE COURT:** And how old are you?

25 **THE DEFENDANT:** Twenty years old.

1 **THE COURT:** And how far did you go in school?

2 **THE DEFENDANT:** Ninth grade.

3 **THE COURT:** All right, can you read and write?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** All right. Mr. Pineda, any severe
6 physical pain or illness that you're experiencing today?

7 **THE DEFENDANT:** No.

8 **THE COURT:** Have you ever been treated for any mental
9 illness?

10 **THE DEFENDANT:** Well, I've had surgery.

11 **THE COURT:** Okay. Are you currently under the
12 influence of any medication?

13 **THE DEFENDANT:** Are you asking whether I need
14 medicine?

15 **THE COURT:** No, just have you taken any medication
16 today for anything, headache, any pain, anything like that?

17 **THE DEFENDANT:** Oh, no, no, no.

18 **THE COURT:** All right. Mr. Pineda, do you feel that
19 you've understood -- that you have understood what has happened
20 in your case leading up to today?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Do you also feel that you are
23 understanding what you are doing here today in court, that is
24 you're here in court today to plead guilty?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** All right. Well, as I mentioned at the
2 outset of the hearing, Mr. Pineda, if you feel that you need
3 further explanation about any part of these proceedings, you
4 can let Mr. Garcia on the phone know, you can ask me a
5 question, or I can let you privately consult with your
6 attorney, okay?

7 **THE DEFENDANT:** Okay, very well.

8 **THE COURT:** All right. Mr. Morin, I want to ask you
9 a question now. I want to ask if you believe the Defendant
10 does possess the requisite mental and intellectual capacity to
11 understand these proceedings and to enter a knowing and
12 voluntary plea of guilty?

13 **MR. MORIN:** Yes, your Honor. I've had numerous
14 discussions with Mr. Pineda and there's no doubt in my mind
15 that he understands what's going on, and he is competent at
16 this time.

17 **THE COURT:** And, Mr. Morin, obviously Mr. Pineda
18 speaks Spanish. How has your representation proceeded with
19 Mr. Pineda being a Spanish speaker?

20 **MR. MORIN:** Your Honor, I'm fluent in Spanish. And
21 all of the documents that I have been furnished with, I have
22 translated every one of these. And then I have gone through it
23 page-by-page, explained all of the legal terms to him, in a way
24 and a fashion which I know he understands what we have been
25 discussing.

1 **THE COURT:** All right, thank you. Mr. Pineda, are
2 you satisfied with your attorney's representation?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Did you receive a copy of the indictment
5 that is pending against you?

6 **THE DEFENDANT:** Yes, I've seen it.

7 **THE COURT:** Did you fully discuss the charges in the
8 indictment and the facts of your case with your attorney?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** After discussing this case with your
11 attorney, is it your desire to plead guilty?

12 **THE DEFENDANT:** Yes

13 **THE COURT:** All right, Mr. Pineda, I can have the
14 Government read the indictment to you as part of these
15 proceedings today, or you can waive the reading if you do not
16 need it read.

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** Would you like to have the indictment
19 read, Mr. Pineda?

20 **THE DEFENDANT:** No, it is not necessary.

21 **THE COURT:** All right, Mr. Pineda, as mentioned at
22 the outside of the hearing today, I understand that you intend
23 to enter a plea of guilty to Count Eleven of the indictment.
24 This count charges you with a -- with violations of Title 21,
25 United States Code, Section 841(a)(1) and 18 USC Section 2,

1 which is manufacture and possession with intent to manufacture
2 and distribute 100 or more of marijuana plants and aiding and
3 abetting. Do you understand that is what you're charged with
4 in Count Eleven of the indictment?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** The range of punishment for that offense
7 is imprisonment for a period not less than five years and not
8 to exceed 40 years; a fine not to exceed \$5 million, or twice
9 any pecuniary gain to the Defendant or loss to the victim; a
10 term of supervised release of at least four years which may be
11 mandatory and will follow any term of imprisonment; a mandatory
12 special assessment of \$100; and costs of incarceration and
13 supervision. Do you understand that is the range of punishment
14 for the offense charged in Count Eleven?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** All right, I'm going to turn my attention
17 next to the plea agreement addendum which has been submitted to
18 the Court today under seal. And first of all, with regard to
19 this addendum, Mr. Morin, have you reviewed the contents of it
20 with your client, Mr. Pineda?

21 **MR. MORIN:** I have, your Honor.

22 **THE COURT:** Do you believe he understands the
23 contents?

24 **MR. MORIN:** Again, your Honor, yes. I went over this
25 in Spanish with him and I explained it to him in a fashion

1 which I know he does understand what it states.

2 **THE COURT:** All right. And, Mr. Pineda, let me ask
3 you about the addendum. Do you have any questions or concerns
4 about it?

5 **THE DEFENDANT:** No.

6 **THE COURT:** All right, then I'll now ask Mr. Hurst if
7 he would summarize the plea agreement in this case.

8 **MR. HURST:** Yes, your Honor. The plea agreement is a
9 six-page document. It's been signed and dated by all parties
10 on page six, and submitted to the Court. In summary, that plea
11 agreement states the Defendant does agree to enter a plea of
12 guilty to Count Eleven of the indictment, in violation of Title
13 21, United States Code, Section 841(a)(1), manufacture and
14 possession with intent to manufacture or distribute a
15 controlled substance. He acknowledges his constitutional
16 rights and the sentence that may be imposed. He understands
17 restitution could be ordered. He understands that he'll have
18 to pay an assessment. This agreement, your Honor, is pursuant
19 to Federal Rule of Criminal Procedure 11(c)(1)(C). In
20 paragraph four, the parties agree that the following
21 stipulations yield the appropriate sentence in this case: (a)
22 the Defendant will be sentenced to a term of imprisonment for
23 70 to 98 months; the Defendant will pay the mandatory special
24 assessment of \$100; and the Court will determine and impose any
25 fine, community service, or term of supervised release deemed

1 appropriate. The parties understand that the Court may decline
2 to accept this agreement. If this Court does not accept the
3 agreement, the Defendant will be given the opportunity to
4 withdraw from the plea.

5 In paragraph five, the Defendant and Government,
6 defense counsel, acknowledge that by pleading guilty to this
7 crime, it could affect his Immigration status in this country,
8 and that he wants to plead guilty regardless of any Immigration
9 consequences that the plea may entail, even if the consequence
10 is automatic removal from the United States.

11 In paragraph six, the United States Attorney for the
12 Eastern District of Texas agrees not to prosecute the Defendant
13 for any additional non-tax-related charges based on the conduct
14 underlying and related to the Defendant's plea of guilty.
15 After sentencing, the Government will move to dismiss the
16 remaining criminal charges against this Defendant.

17 The Defendant understands the consequences of a
18 violation of this agreement. It is a voluntary plea that he
19 freely and voluntarily has entered into and is not the result
20 of force, threats, or promises, other than those set forth in
21 this agreement.

22 In paragraph nine, he waives his right to appeal the
23 conviction, sentence, fine, order of restitution, order of
24 forfeiture in this case on all grounds. The Defendant agrees
25 not to contest the conviction, sentence, fine, order of

1 restitution, in any post-conviction proceedings including, but
2 not limited to, a proceeding under Title 28, United States
3 Code, Section 2255. The Defendant, however, does reserve the
4 right to appeal the failure of the Court after accepting this
5 agreement to impose a sentence in accordance with the terms of
6 this agreement, and he also reserves the right to appeal or
7 seek collateral review of a claim of ineffective assistance of
8 counsel. The Defendant has been represented by counsel. He's
9 been provided discovery in this case and decided after
10 reviewing the case with counsel that it's in his best interest
11 to enter this plea agreement. This plea agreement consists of
12 this document and the sealed agreement. It does not bind any
13 other Federal or State or local prosecuting authority. And we
14 have filed the original with the Court today. That is the
15 summary of the plea agreement, your Honor.

16 **THE COURT:** All right, thank you. Mr. Pineda, let me
17 ask you about the plea agreement. Are those the terms of your
18 plea agreement with the Government?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Is there anything in the agreement that
21 you do not understand?

22 **THE DEFENDANT:** No, I understood everything.

23 **THE COURT:** Has anyone made any other promise to you,
24 other than what is in the plea agreement, in exchange for your
25 plea?

1 **THE DEFENDANT:** No.

2 **THE COURT:** Has anyone attempted to force you to
3 plead guilty?

4 **THE DEFENDANT:** No.

5 **THE COURT:** Are you pleading guilty because you are
6 in fact guilty?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** And, Mr. Morin, you mentioned this
9 earlier, but you have fully and completely discussed each term
10 of the plea agreement with the Defendant.

11 **MR. MORIN:** Yes, your Honor. I met with him at the
12 county jail and we went over every paragraph. And I read this
13 to him in Spanish and then I explained it to him in a way that
14 I feel very comfortable and I know that he understand what's in
15 every paragraph.

16 **THE COURT:** All right. And now, Mr. Pineda, I'm
17 going to ask you some questions now about paragraph four of the
18 plea agreement because these deal with sentencing. And first
19 of all, I'm going to ask you if you understand that your
20 agreement with the Government is pursuant to Federal Rule
21 11(c)(1)(C).

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** And do you understand that you and the
24 Government have agreed that the appropriate sentence here will
25 be a term of imprisonment for 70 to 98 months, you will pay a

1 special assessment of \$100, and the Court will determine and
2 impose any fine, community service, or term of supervised
3 release deemed appropriate?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** And do you understand also that paragraph
6 four states that the Court may decline to accept this agreement
7 that I just outlined for you?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** And do you understand that if the Court
10 does not accept the agreement, you will have the opportunity to
11 withdraw from the plea?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** And do you also understand that if the
14 Court does not accept the agreement and you decide to not
15 withdraw your plea, the sentence the Court imposes may be less
16 favorable to you than what is in the plea agreement?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** All right, Mr. Pineda, any questions or
19 concerns you have about paragraph four or sentencing in this
20 case?

21 **THE DEFENDANT:** No.

22 **THE COURT:** All right, I'm going to ask you now,
23 Mr. Pineda, about the rights you have but you give up by
24 pleading guilty. Now, do you understand you have the right to
25 plead not guilty and to go to trial on that plea?

1 **THE DEFENDANT:** I'm sorry, you're asking whether I
2 want to go to trial?

3 **THE COURT:** Well, I'm asking you, Mr. Pineda, if you
4 understand you have the right to plead not guilty and to go to
5 trial.

6 **THE DEFENDANT:** Oh, yes, yes, yes.

7 **THE COURT:** So pleading guilty is not the only
8 option. The second option is you could go to trial. And you
9 do realize you have that option.

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** All right, if you persist in your desire
12 to plead guilty, Mr. Pineda, you are waiving the following
13 rights: You have a right under the Constitution and the laws
14 of the United States to a full trial on the merits before a
15 jury. You'll be presumed to be innocent. And the Government
16 would have to affirmatively prove all of the elements of the
17 charged offense beyond a reasonable doubt. At trial, you enjoy
18 the right to be assisted by your attorney, the right to testify
19 on your behalf, if you desired, the right not to be compelled
20 to testify if you did not want to, the right to compulsory
21 process to compel the attendance of witnesses on your behalf,
22 the right to cross examine Government witnesses, and the right
23 to a speedy and public trial. Now, do you understand by
24 pleading guilty, you are waiving and losing these rights
25 guaranteed under the Constitution and laws of the United

1 States?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** All right, Mr. Pineda, I'm going to go
4 over now another paragraph with you in the plea agreement. And
5 I do this because it's very important in that it deals with
6 your appellate rights. It's paragraph nine, titled: "Waiver
7 of right to appeal or otherwise challenge sentence." And I
8 want to confirm with you that you understand you have agreed to
9 waive your right to appeal the conviction, sentence, fine,
10 order of restitution, order of forfeiture in this case on all
11 grounds.

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** Do you also understand you have agreed
14 you will not contest those same things in any post-conviction
15 proceeding including, but not limited to, a proceeding under 28
16 USC, Section 2255?

17 **THE DEFENDANT:** Uh-huh.

18 **THE COURT:** And, finally, do you understand you've
19 reserved the right to appeal only two issues: if there were a
20 failure of the Court after accepting this agreement to impose a
21 sentence in accordance with the terms of this agreement, or a
22 claim of ineffective assistance of counsel, which you've also
23 reserved the right to seek collateral review of that issue?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** All right then. Again, Mr. Morin, just

1 for the record, I think you've covered this with me already,
2 but you have informed the Defendant fully of the consequences
3 of his plea of guilty.

4 **MR. MORIN:** I have, your Honor.

5 **THE COURT:** And having done that, informed him of the
6 consequences, do you believe he understands what he is doing
7 and is acting voluntarily today?

8 **MR. MORIN:** I do, your Honor.

9 **THE COURT:** All right, before I can accept any plea
10 of guilty, it is necessary for the elements of the offense to
11 be established and that there be facts in the case establishing
12 each element. So I would ask Mr. Hurst if he would read the
13 elements of this offense and establish a factual basis for the
14 taking of the plea.

15 **MR. HURST:** Yes, your Honor. To establish that the
16 Defendant is guilty of manufacture and possession with intent
17 to manufacture and distribute 100 or more marijuana plants,
18 Government must prove the following beyond a reasonable doubt:
19 first, that the Defendant knowingly manufactured a controlled
20 substance; second, that the substance was in fact marijuana;
21 and, third, that the quantity of the substance was at least 100
22 marijuana plants. In the alternative, these are the
23 alternative elements, or that the Defendant knowingly possessed
24 a controlled substance, that the substance was in fact
25 marijuana, that the Defendant possessed the substance with the

1 intent to manufacture or distribute it. And, fourth, that the
2 quantity of the substance was at least 100 marijuana plants.
3 We have provided that via the electronic filing system of the
4 Court and also to defense counsel.

5 Mr. Pineda, you are the same Hugo Pineda named in
6 Count Eleven of the indictment; is that correct?

7 **THE DEFENDANT:** Yes.

8 **MR. HURST:** And you've been over the facts and
9 circumstances of this case with your lawyer; is that correct?

10 **THE DEFENDANT:** Yes.

11 **MR. HURST:** And he's gone over with you a two-page
12 document I think that's before you right now; is that correct?

13 **THE DEFENDANT:** Yes.

14 **MR. HURST:** And in that document, you acknowledge
15 that you were in the Eastern District of Texas back in October
16 of 2016; is that correct?

17 **THE DEFENDANT:** Yes.

18 **MR. HURST:** And that you participated in the growing
19 of over 100 or more marijuana plants.

20 **THE DEFENDANT:** Yes.

21 **MR. HURST:** There's some other facts in that -- in
22 those paragraphs. Is everything in that factual basis true and
23 correct?

24 **THE DEFENDANT:** Yes.

25 **MR. HURST:** Your Honor, I believe that does establish

1 a sufficient basis for a factual basis for the plea. And we
2 would move the factual basis into evidence at this time.

3 **MR. MORIN:** No objection, your Honor.

4 **THE COURT:** All right, thank you. The factual basis
5 will be admitted. Mr. Pineda, let me ask you. Mr. Hurst read
6 the elements of this offense. And I want to ask you if you
7 understand each of those elements.

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Do you also understand that these are the
10 matters the Government is required to prove beyond a reasonable
11 doubt in order to convict you of this offense?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** All right, I turn now to the factual
14 basis which has been presented to me. I've reviewed and
15 considered it. I've also considered your answers to
16 Mr. Hurst's questions. Now, Mr. Pineda, about this factual
17 basis, is everything in it true and correct?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** And did you go over it with Mr. Morin?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** And did he translate it for you into
22 Spanish?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Now, Mr. Pineda, do you understand that
25 by admitting that you engaged in this conduct that's submitted

1 to me today in this factual basis, and also in what you
2 answered to Mr. Hurst, you are admitting the charge against you
3 in Count Eleven of the indictment and waiving any defenses you
4 might have to that charge?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** And do you also understand by admitting
7 that you engaged in this conduct, this conduct is going to be
8 evaluated in calculating your appropriate sentence?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** All right, Mr. Pineda, do you feel that
11 you've understood everything that's gone on here today?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** All right, before I ask how you plead, do
14 you have any questions or need to talk to your attorney about
15 anything?

16 **THE DEFENDANT:** No, it's all good.

17 **THE COURT:** All right, Mr. Pineda, how do you plead
18 to Count Eleven of the indictment?

19 **THE DEFENDANT:** Guilty.

20 **THE COURT:** The Court finds the Defendant is
21 competent and capable of entering an informed plea. I further
22 find that the Defendant's plea of guilty is knowingly and
23 voluntarily made and is supported by an independent basis of
24 fact contained in each of the essential elements of this
25 offense. Therefore, I will recommend that your plea be

1 accepted and that you be judged guilty of this offense. A
2 finding of fact and recommendation will be sent to the district
3 judge recommending that he accept my findings and your plea of
4 guilty. A written Presentence Report will be prepared by the
5 probation office to assist the judge in sentencing. You will
6 be asked to give information for the report, and your attorney
7 may be present if you wish. The Court will permit you and your
8 counsel to read the Presentence Report before the sentencing
9 hearing and to make objections if you deem necessary. You and
10 your attorney will be afforded the opportunity to address the
11 Court at the sentencing hearing.

12 All right, anything further from the Government at
13 this time?

14 **MR. HURST:** No, your Honor, thank you.

15 **THE COURT:** Anything further from the Defendant?

16 **MR. MORIN:** Nothing, your Honor.

17 **THE COURT:** All right, thank you. The Defendant is
18 remanded at this time to the custody of the United States
19 Marshals. We are adjourned.

20 **THE MARSHAL:** All rise.

21 **(This proceeding was adjourned at 2:33 p.m.)**

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

March 12, 2018

Dated

TONI HUDSON, TRANSCRIBER